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Wayne Edward Beimesch

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05/08/2009

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EXAMINER

ROGERS, DAVID A

ART UNIT

PAPER NUMBER

2856

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. In response to the appellant's reply brief filed on 24 November 2008, a supplemental Examiner's Answer is set forth below.

(A) The appellant states on page 5 of the reply brief:

Second, although Appellant agrees with the Examiner that pure aluminum foil typically does not release significant amount of VOCs, this notion does not necessarily mean that the aluminum foil material used in Hemphill also does not release significant amount of VOCs. (emphasis in original)

This appears to be in response to the taking of official notice that aluminum does not release VOCs. See page 3 of the final rejection mailed on 25 May 2007. In their subsequent reply filed on 18 September 2007 the appellant unambiguously stated that they agreed with the official notice statement. Nowhere does the appellant state that they agreed that only pure aluminum does not release VOCs.

(B) The appellant states on page 5 of the reply brief:

Third, the Examiner has not provided any evidence to support the position that the polyethylene material in Hemphill's bag does not release significant amount of VOCs.

The appellant is again reminded of their own written description which states

*The enclosed bag preferably has an inner liner formed of aluminum foil and an outer layer formed of polymeric material (e.g., polyethylene) such that the bag can be collapsible while samples are being withdrawn from the headspace. The foil lining can be made of material other than foil so long as it achieves the purpose of being vapor impermeable so as to not to lead to inaccurate VOC measurements.
(page 3 - lines 26-30)*

The appellant's written description further states:

It should be understood, however, that any bag is suitable for use herein so long as it can be safely stored at the requisite temperature and remain sufficiently collapsible."

Clearly, according to the appellant's written description, any polymeric material can be used, with a preference for polyethylene. The sole disclosed purpose of the polymer is to add strength to the bag.

Art Unit: 2856

The bags are constructed of material composed of 100% 28 gage aluminum foil on the inside (for sterile/inert cavity) and 48 gage polyethylene on the outside (for strength).

(page 5 - lines 23-25)

The appellant does not disclose in their originally-filed written description that the polymer must not release VOCs - which is the reason for the foil liner's requirement to be vapor-impermeable. However, absent the polymer/foil liner bag the appellant states that any other bag can be used as long as its materials do not contribute to the VOC measurement. There is no written description requirement for using a polymer that does not release VOCs. And although the appellant discloses the use of 100% aluminum (page 5 - lines 23-25), they themselves acquiesce to the fact that Hemphill's foil liner does not release VOCs as noted above.

Conclusion

2. Appellant may file another reply brief in compliance with 37 C.F.R. 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 C.F.R. 1.136(a) are not applicable to this two month time period. See 37 C.F.R. 41.43(b)-(c).

A Technology Center Director or designee has approved this supplemental examiner's answer by signing below:

/David A. Rogers/
Primary Examiner, Art Unit 2856
/Hezron Williams/
Supervisory Patent Examiner, Art Unit 2856